

(2007) 03 J&K CK 0004
In the Jammu And Kashmir High Court

Bilal Ahmad Mir	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 29-03-2007

Acts Referred:

Constitution of India, 1950 — Article 22

Citation : (2007) 2 JKJ 325

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mansoor Ahmad Mir, J.—Bilal Ahmad Mir son of the detinue, namely, Naba Mir S/O Qadir Mir R/O Reshnagri, Tehsil Shopian District

Pulwama, has invoked the jurisdiction of this Court for quashing the detention order bearing No. 06/DMP/PSA/05 of 2005 dated 15th April,

2005 passed by District Magistrate, Pulwama, whereby and whereunder the detinue came to be detained in detention on the grounds taken in the

writ petition.

Respondents have filed reply.

2. Heard. Perused. Considered.

While going through the records, it appears that detention order came to be passed on 15th April, 2005 and executed on 19th October, 2006.

Thus, on the face of it, delay has crept in execution of the detention order. It is not the case of the respondents that detinue was evading arrest.

Neither the respondents have tendered any explanation in counter. Learned Counsel for respondents frankly conceded that delay has crept in

execution of the detention order.

3. Respondents have failed to establish that there was live and proximate link between the detention order and its purpose. Under these

circumstances, the purpose of detention is snapped on account of delay in securing the detenu and detaining him. Apex Court in case titled

K.P.M. Basheer Vs. State of Karnataka and another, has observed as under:

11. Under these circumstances, we are of the view that the order of detention cannot be sustained since the live and proximate link' between the

grounds of detention and the purpose of detention is snapped on account of the undue and unreasonable delay in securing the appellant/detenu and

detaining him. As we have now come to the conclusion that the order of detention is liable to be set aside on this ground alone, we are not dealing

with other contentions raised in the Memorandum of Appeal as well as in the writ petition.

4. Respondents have not been able to indicate that material relied upon and activities attributed to the detenu were existing at the time of

execution of the detention order. Thus, delay in execution of the detention order has rendered its purpose irrelevant. Apex Court in case titled

Manju Ramesh Nahar Vs. Union of India and Others, has held that object of detention order can be achieved if the order is immediately executed.

If, however, the authorities or those who are responsible for the execution of the order, sleep over the order and do not execute the order against

the person against whom it has been issued, it would reflect upon the ""satisfaction"" of the detaining authority and would also be exhibit of the fact

that the immediate necessity of passing that order was wholly artificial or non-existent.

5. This Court in case in case titled Naseer Ahmad Sheikh v. Addl. Chief Secretary Home and Anr. reported in 1999 SLJ 241 has observed as

under:

13. We fail to comprehend as to how could in view of this legal requirement be it held that the procedure adopted was not violative of the mandate

of Section 13. The order having been passed in respect of the detenu who was already in custody on 9.6.1997, the grounds of detention ought to

have been communicated at the latest by 19.6.1997. The fact of the matter is that the grounds of detention were served on the detenu on

30.6.1997. There has thus been the clear and utter non-observance of the

mandate of Section 13 of the Act. This breach of the statutory requirement is itself sufficient to render the detention order invalid.

6. It appears that detaining authority had passed detention order No. DMP/PSA/73 of 2003 dated 08.03.2003 against the detainee which was challenged by the medium of OWP No. 127/2004 and the execution of the said detention order came to be stayed by this Court in terms of the interim direction but detaining authority on the same grounds and material passed the impugned detention order and detained the detainee. Either this fact was not brought to the notice of the detaining authority or he has not applied his mind. Thus, detention order suffers from non-application of mind.

7. It is averred in the petition that copies of FIR, seizure memo, grounds of detention and detention order were not supplied to the detainee. There is nothing available on the file suggesting the fact that such material was supplied to the detainee in order to make an effective representation. Thus, on this count, the detention order is bad.

8. In *Sophia Gulam Mohd. Bham Vs. State of Maharashtra and Others*, , the Apex Court has observed as under;-

...The right to be communicated the grounds of detention flows from Article 22(5) while the right to be supplied all the material on which the grounds are based flows from the right given to the detenu to make a representation can be made and the order of detention can be assailed only when all the grounds on which the order is based are communicated to the detainee and the material on which those grounds are based are also disclosed and copies thereof are supplied to the person detained in his own language...

9. In terms of the mandate of the provisions of Public Safety Act, the detaining authority was under legal obligation to inform the detainee within five days or at the best within ten days that the detainee has a right to make representation. The perusal of the record reveals that the detaining authority has not complied with the mandate of law.

10. Perusal of the detention order reveals that the District Magistrate ordered the detention of the detainee for a period of six months which is beyond his power and competence. At the best the detaining authority can detain a person for a period of 12 days. Thus on this count, the

detention order suffers from non-application of mind.

11. In view of the above discussion, it is hereby held that detention order merits to be quashed.

Accordingly, the petition is allowed. The detention order is, hereby, quashed with the command to the State to release the detenue forthwith

provided he is not required in any other case.

Registry is directed to return the record of the case to Mr. M. A. Wani, Dy. AG.